



[Docket No. FR-6284-N-01]

Implementation of the Fostering Stable Housing Opportunities Amendments

AGENCY: Office of the Assistant Secretary for Public and Indian Housing (PIH), Department of Housing and Urban Development (HUD).

ACTION: Notice.

SUMMARY: This notice implements and provides guidance on the provisions of the Fostering Stable Housing Opportunities (FSHO) amendments that are effective through the publication of this notice. This notice also identifies the provisions of FSHO that were effective upon enactment (i.e., December 27, 2020) or otherwise already in effect and advises of actions that may or must be taken now to comply with the changes. Additionally, this notice identifies the provisions of FSHO that require further action from HUD to be implemented. Through this notice, HUD also seeks public comment on certain provisions of FSHO. However, HUD welcomes public comment on any of this notice's provisions.

DATES: *Effective date of amendments in Section III of this notice:* [INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

Comment due date: [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Interested persons are invited to submit comments regarding this document. All communications must refer to the above docket number and title. There are two methods for submitting public comments.

1. *Submission of Comments by Mail.* Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410-0500.

2. *Electronic Submission of Comments.* Interested persons may submit comments electronically through the Federal eRulemaking Portal at www.regulations.gov. HUD strongly

encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make comments immediately available to the public. Comments submitted electronically through the www.regulations.gov Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

No Facsimile Comments. Facsimile (fax) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m., weekdays, at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202-708-3055 (this is not a toll-free number). Copies of all comments submitted are available for inspection and downloading at www.regulations.gov.

FOR FURTHER INFORMATION CONTACT: Ryan E. Jones, Director, Housing Voucher Management and Operations Division, Department of Housing and Urban Development, 451 Seventh Street SW, Room 4216, Washington, DC 20410, telephone number (202) 402-2677. (This is not a toll-free number.) HUD encourages submission of questions about this document be sent to: FYI@hud.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The Fostering Stable Housing Opportunities (FSHO) amendments, enacted as section 103 of division Q of the Consolidated Appropriations Act, 2021 on December 27, 2020 (Pub. L. 116-260), made changes to the assistance provided to eligible youth pursuant to the Family Unification Program (FUP) authorized under Section 8(x) of the U.S. Housing Act of 1937 (42 U.S.C. 1437f(x)). FSHO provides an extension of the assistance provided to eligible youth for up to 24 months beyond the 36-month time limit of assistance if the youth is participating in a

Family Self-Sufficiency (FSS) program under section 23 of the U.S. Housing Act of 1937 and for youth who are unable to enroll in an FSS program who engaged in education, workforce development, or employment activities for at least 9 months of the 12-month period preceding the extension. FSHO also provides an extension of assistance for up to 24 months beyond the 36-month time limit of assistance for eligible youth who meet one of three statutory exceptions.

FUP provides Housing Choice Vouchers (HCVs) to two different populations: (1) families for whom the lack of adequate housing is a primary factor in the imminent placement of the family's child or children in out-of-home care or in the delay of the discharge of the child or children to the family from out-of-home care ("FUP families"), and (2) eligible youth who are at least 18 years of age and not more than 24 years of age who have left foster care, or will leave foster care within 90 days, in accordance with a transition plan described in section 475(5)(H) of the Social Security Act, and are homeless or at risk of becoming homeless at age 16 or older ("FUP youth").

In 2019, HUD established the Foster Youth to Independence (FYI) initiative. Through Notice PIH 2019-20, HUD made available Tenant Protection Vouchers (TPVs) targeted to youth eligible under FUP, subject to availability. These vouchers are referred to as FYI TPVs. The assistance was made available under the Consolidated Appropriations Act, 2019, (Pub. L. 116-6), enacted on February 15, 2019, that allowed TPV appropriated funds to be used for FUP. The notice explained the eligibility and application requirements for FYI TPV funding and described how applications will be processed. HUD made FYI TPVs available under the notice through the end of Fiscal Year (FY) 2020.

Following the rollout of FYI, Congress provided funding targeted for eligible youth under section 8(x) of the U.S. Housing Act of 1937 in the two most recent appropriations Acts—the Consolidated Appropriations Act, 2021, (Pub. L. 116-260), enacted on December 27, 2020, and the Further Consolidated Appropriations Act, 2020, (Pub. L. 116-94), enacted on December 20, 2019 ("the Acts"). While the Acts allowed that a portion of the appropriated

amounts be made available without competition, the Acts also required that a minimum amount be made available competitively. On October 6, 2020, HUD issued Notice PIH 2020-28,¹ making available up to \$10 million dollars for youth under FUP to be available on a rolling basis without competition. Subsequently, HUD issued the Foster Youth to Independence Competitive Notice of Funding Availability (FR-6400-N-41) making available \$20 million dollars to assist youth under FUP.² On September 3, 2021, HUD issued Notice PIH 2021-26, making available an additional \$10 million for youth under FUP on a rolling basis without competition. HUD refers to vouchers that are funded from these appropriated amounts as FYI vouchers, regardless of whether they were awarded competitively or noncompetitively.

The assistance made available under FYI, including FYI vouchers and FYI TPVs, are collectively referred to in this notice as “FYI.” In this notice, HUD calls out FYI TPVs only where the operating requirements are different from those for the newer FYI vouchers and such program requirement distinctions impact the implementation of FSHO.

By statute, there is no time limitation on FUP assistance when used to assist FUP-eligible families. However, FUP assistance used to assist FUP-eligible youth (FUPY), including FYI vouchers, collectively referred to hereafter as “FUPY/FYI” assistance, is subject to a 36-month time limit.

Public housing agencies (PHAs) administer FUP (including FUPY/FYI) in partnership with Public Child Welfare Agencies (PCWAs), who are responsible for referring families and youth to the PHA for a determination of eligibility for FUP rental assistance. Once the PCWA makes the referral, the PHA places the FUP applicant on its waiting list,³ determines whether the family or youth meets HCV program eligibility requirements, and conducts all other processes relating to voucher issuance and administration. The PCWA is responsible for

¹ <https://www.hud.gov/sites/dfiles/PIH/documents/pih2020-28.pdf>.

² https://www.hud.gov/sites/dfiles/SPM/documents/Foa_Content_of_FR-6400-N-41.pdf.

³ FYI TPVs do not require the use of a waiting list since the FYI TPV is awarded to the PHA for use by a specific person and is a special (non-waiting list) admission.

providing or leveraging follow-up supportive services, such as educational counseling and job preparation, for the period defined in the notice or Notice of Funding Availability/Opportunity (NOFA/O) for which the funding was made available.

The FSHO amendments made changes to the FUP authorized under section 8(x) of the U.S. Housing Act of 1937 to provide eligible youth with an extension of FUPY/FYI voucher assistance for up to 24 months beyond the 36-month time limit of assistance if they are participating in an FSS program under section 23 of the U.S. Housing Act of 1937 (42 U.S.C. 1437u). In cases where a PHA is not carrying out an FSS program or is carrying out an FSS program in which the youth has been unable to enroll, FSHO provides the youth with an extension of FUPY/FYI voucher assistance for up to 24 months beyond the 36-month time limit of assistance if they engaged in education, workforce development, or employment activities for at least 9 months of the 12-month period preceding the extension. FSHO also provides an extension of FUPY/FYI voucher assistance for up to 24 months beyond the 36-month time limit of assistance for youth who are responsible for the care of a dependent child under the age of 6 or for the care of an incapacitated person; regularly and actively participating in a drug addiction or alcohol treatment and rehabilitation program; or incapable of complying with the requirement to participate in an FSS program or engage in education, workforce development, or employment activities, as applicable, due to a documented medical condition.

This notice implements and provides guidance on the provisions of FSHO that are effective as of this notice's effective date (see Section III). This notice also identifies the provisions of FSHO that were effective upon enactment (i.e., December 27, 2020) or otherwise already in effect and advises of actions that may or must be taken now to comply with the changes (see Section IV). Additionally, this notice identifies the provisions of FSHO that require further action from HUD to be implemented (see Section V).

Through this notice, HUD also seeks public comment on certain provisions of FSHO. Specifically, HUD seeks public comment on the provisions of FSHO related to participation in

an FSS program and engagement in education, workforce development, and employment activities and has included specific questions for public comment in each of these sections. While this notice implements these provisions, HUD is seeking public comment in order to determine whether future changes are necessary. HUD also welcomes public comment on any of the other provisions of this notice. All comments must be submitted using the two methods detailed above.

II. Applicability (Section 103(d) of FSHO)

Section 103(d) of FSHO made the provisions of FSHO applicable only to FUPY/FYI vouchers that were not in use on behalf of an assisted family as of the date of the enactment of FSHO (i.e., December 27, 2020). For FUPY/FYI tenant-based vouchers, the provisions of FSHO apply to eligible youth who first leased or leases a unit where the effective date of the HAP contract execution is after December 27, 2020. For FUPY/FYI project-based vouchers (PBVs), the provisions of FSHO apply to eligible youth who first entered or enters into a lease agreement for their PBV unit after December 27, 2020.^{4,5,6} The provisions of FSHO apply to FUPY/FYI vouchers regardless of whether the PHA was awarded the voucher allocation before or after the enactment of FSHO as long as the youth first leased or leases a unit after the date of enactment of FSHO (i.e., December 27, 2020).

III. Provisions of FSHO Implemented through this Notice

A. Requirements to Extend Assistance for Youth Aging Out of Foster Care

(Section 103(b)(1) of FSHO)

⁴ Except for the provisions related to the PBV percentage limitation and income-mixing requirement, which are tied to the effective date of the HAP contract. These provisions are discussed in section IV(D) of this document.

⁵ While PHAs may project-base FUPY/FYI vouchers (except FYI TPVs), PHAs are reminded that sponsor-based housing is not permitted under the PBV program (unless the PHA is a Moving to Work (MTW) agency, and it has received HUD approval to create a sponsor-based housing program through its Annual MTW Plan or MTW Supplement to the PHA Plan). Under the sponsor-based housing model, PHAs provide housing funds directly to sponsors (i.e., nonprofits and social service providers) through a competitive process and the providers use the funds to secure private market rentals, typically through master lease contracts, that are then subleased to program participants. Certain administrative responsibilities (e.g., eligibility determinations, wait list management) are delegated to the qualified sponsor and the PHA performs a quality control audit.

⁶ Note that PHAs are prohibited from project-basing FYI TPVs since FYI TPVs “sunset” (i.e., may not be reissued) when a youth leaves the program.

i. Extension of Assistance

Section 103(b)(1) of FSHO amended section 8(x) of the U.S. Housing Act of 1937 (42 U.S.C. 1437f(x)) to add a new paragraph (5), subparagraph (A), to provide an extension of FUPY/FYI assistance for youth who are participating in a Family Self-Sufficiency (FSS) program under section 23 of the U.S. Housing Act of 1937 (42 U.S.C. 1437u) and for youth who are unable to enroll in an FSS program but who engaged in education, workforce development, or employment activities for at least 9 months of the 12-month period preceding the extension. Section 103(b)(1) of FSHO also provides youth with an extension of FUPY/FYI assistance if they meet one of three statutory exceptions. These requirements for the extension of FUPY/FYI assistance are described below.

PHAs must inform FUPY/FYI youth of the provisions of FSHO that allow for an extension of FUPY/FYI assistance and the requirements that they must meet to receive such an extension during the family briefing (24 CFR 982.301(a)). PHAs must also notify FUPY/FYI youth who were issued a voucher prior to the publication of this notice and first leased or leases a unit after 12/27/2020, to inform them of the availability of this extension of assistance and the requirements that they must meet to receive such an extension. PHAs should note that FSHO does not restart or otherwise impact the initial 36-month time limit of assistance for FUPY/FYI vouchers but does make FUPY/FYI youth who first leased or leases a unit after 12/27/2020 eligible for an extension of assistance of up to 24 months.

Through the publication of this notice, HUD is not establishing terms or conditions for meeting these requirements beyond those contained in the statute. HUD is providing PHAs with flexibility in applying these requirements and encourages PHAs to consider how they can provide extensions of FUPY/FYI assistance to the broadest population possible consistent with the statutory requirements. In accordance with 24 CFR 982.54(a), PHAs must update their Administrative Plans to include written policies regarding how they will implement the following provisions of FSHO. HUD encourages PHAs to consult with their partnering PCWAs

and other groups that work with foster youth when formulating their policies for implementing the requirements below.

As one of the goals of FSHO is to help FUPY/FYI youth advance their education, improve their career and employment prospects, and build towards financial security, HUD encourages PHAs that do not currently administer an FSS program to start one by creating an FSS Action Plan pursuant to 24 CFR 984.201 and having it approved by their local HUD Field Office. The creation of an FSS program would allow FUPY/FYI youth who enroll in the FSS program to accrue funds in an escrow account, in accordance with 24 CFR 984.305. Youth may use these funds to invest further in their education, to build financial security, or to help achieve other life goals.

(a) Extension of Assistance for Youth Participating in a Family Self-Sufficiency Program.

An eligible youth who is participating in the Family Self-Sufficiency (FSS) program authorized under section 23 of the U.S. Housing Act of 1937 (42 U.S.C. 1437u) is entitled to receive FUPY/FYI assistance for up to an additional 24 months beyond the 36-month time limit of assistance as long as the youth is in compliance with the applicable terms and conditions of the FSS program set forth in section 23 of the U.S. Housing Act and the FSS program regulations at 24 CFR part 984.

Families cannot be required to participate in the FSS program as a condition of receipt of assistance under the HCV program, including FUPY/FYI assistance. However, only FUPY/FYI youth that sign an FSS Contract of Participation and comply with the requirements of the FSS program are entitled to receive an extension of the time limit for voucher assistance under this statutory provision. A FUPY/FYI youth must participate in the FSS program if it is available to them in order to receive the extension of the time limit for voucher assistance unless the youth meets one of the statutory exceptions described in paragraph (c) below.

A PHA that carries out an FSS program must inform the FUPY/FYI youth of the availability of the FSS program at the time the voucher is issued and offer them an FSS slot, if

available, or offer to place them on the FSS waiting list. The PHA must also notify FUPY/FYI youth who were issued a voucher prior to the publication of this notice and first leased or leases a unit after 12/27/2020, and offer them an FSS slot, if available, or offer to place them on the FSS waiting list.

HUD has determined that if a PHA that carries out an FSS program is unable to offer a FUPY/FYI youth an FSS slot during their first 36 months of receiving FUPY/FYI assistance, the youth is considered to have been “unable to enroll” in the program and may have their voucher extended by meeting the education, workforce development, or employment requirements in paragraph (b) below. In other words, a FUPY/FYI youth must accept an FSS slot if it is offered to them prior to the 36-month mark in order to receive an extension of assistance (unless the youth meets one of the statutory exceptions described in paragraph (c) below). If an FSS slot becomes available between the 36-month mark and the 48-month mark, the PHA must offer the slot to a FUPY/FYI youth who had their voucher extended based on meeting the education, workforce development, or employment requirement or one of the statutory exceptions (even if the youth previously declined an FSS slot because they met one of the statutory exceptions). The PHA must work with the youth to determine whether enrollment in FSS is feasible and in their best interest given any education, workforce development, or employment activities that the youth is engaged in and any statutory exceptions that apply to the youth, as well as the remaining time on their FUPY/FYI voucher. If the FUPY/FYI youth accepts the FSS slot, the PHA must work with the youth to establish Contract of Participation goals and an Individual Training and Services Plan (ITSP) that can be accomplished within the time period left on the FUPY/FYI voucher. The PHA may, but is not required to, offer a FUPY/FYI youth an FSS slot that becomes available between the 48-month mark and the 60-month mark, since the youth will have already received their second and final extension under FSHO.

HUD is establishing this 36-month cut-off because it recognizes that it may not always be feasible or in the best interest of the youth to enroll in an FSS program after the 36-month mark because of the limited time period of FUPY/FYI assistance. At that point, the FUPY/FYI youth will already be engaging in education, workforce development, or employment activities described in paragraph (b) below (unless they meet one of the statutory exceptions described in paragraph (c) below), and it may not be feasible to incorporate these activities into an FSS Contract of Participation for the remaining time period of the FUPY/FYI voucher. Therefore, a FUPY/FYI youth who met the alternative requirement described in paragraph (b) below or one of the statutory exceptions described in paragraph (c) below at the 36-month mark and received an extension of assistance on that basis may decline an FSS slot that is offered between the 36-month mark and the 48-month mark and meet the alternative requirements described in paragraph (b) below or one of the statutory exceptions described in paragraph (c) below in order to receive an extension of assistance at the 48-month mark.

A PHA may give a selection preference for up to 50 percent of their FSS program slots to families with a member already enrolled in, or on the waiting list for, an FSS-related service program (24 CFR 984.203). If a PHA chooses to establish a selection preference in its FSS program, the PHA may, but is not required to, create a selection preference for FUPY/FYI youth to help ensure that they are able to enroll in the program. This is allowed under 24 CFR 984.203 because the services provided through the PCWA or other parties as required by the FUPY/FYI programs are considered an “FSS related service program.” FUPY/FYI youth participating in the services or who are on the waiting list for the services may be considered eligible for the preference.

For FUPY/FYI youth who enroll in the FSS program, the PHA must comply with the regulations concerning the term of the FSS Contract of Participation at 24 CFR 984.303(c) and any extensions of that term at 24 CFR 984.303(d). However, since it will be known that the FUPY/FYI participant’s voucher will only be available for a specific period of time (not to

exceed 60 months, total), the PHA's FSS Program Coordinator must work with the FUPY/FYI youth to establish Contract of Participation goals and an ITSP that can be accomplished within the time period left on the FUPY/FYI voucher. For example, a FUPY/FYI youth who enrolls in FSS at the beginning of their first year of receiving FUPY/FYI assistance would have five years in the FSS program before the expiration of their FUPY/FYI assistance while a youth that enrolls in FSS at the beginning of their third year of receiving FUPY/FYI assistance would have 3 years in the FSS program before the expiration of their FUPY/FYI assistance. The PHA should also ensure that their FSS Action Plan reflects policies that allow for goals to be changed or added to the Contract of Participation in order to allow the youth to continue in the FSS program through the full Contract of Participation period in the case that the FUPY/FYI youth is later issued a regular voucher or if there is another type of change in rental assistance which allows for the youth to continue in FSS after the FUPY/FYI assistance has expired.

If the PHA does not have an FSS program or if the FUPY/FYI youth has not been provided an opportunity to enroll in the FSS program during the first 24 months of FUPY/FYI assistance, HUD encourages the PHA to remind the youth at the 24-month reexamination of the education, workforce development, and employment requirements described in paragraph (b) below so that the youth has enough time to meet these requirements prior to the expiration of the 36-month time period for FUPY/FYI assistance. However, if the FUPY/FYI youth is later offered an FSS slot prior to the 36-month mark, the youth will be required to enroll in the FSS program in order to receive an extension of assistance at the end of the 36-month and 48-month time periods (unless they meet one of the statutory exceptions described in paragraph (c) below). If the FUPY/FYI youth is offered an FSS slot prior to the 36-month mark, the youth will not be considered to have been "unable to enroll" in the FSS program, and, as a result, will not be eligible to receive an extension of assistance based on meeting the education, workforce development, or employment requirements described in paragraph (b) below.

At the 36-month and 48-month reexaminations, the PHA must extend the FUPY/FYI voucher assistance if the youth is participating in and in compliance with the FSS program as long as the youth is still eligible for the HCV program. In any case, the FUPY/FYI youth cannot receive more than a total of 60 months of FUPY/FYI voucher assistance even if the FSS Contract of Participation time period extends beyond the FUPY/FYI voucher 60-month mark.

Question for Comment

1. In order to receive an extension of FUPY/FYI assistance, should the cut-off for requiring a youth to enroll in the FSS program be the 36-month mark or is a different cut-off more appropriate based on the requirements of the FSS program?

(b) Extension of Assistance for Youth Engaging in Education, Workforce Development, or Employment Activities.

If a PHA does not carry out an FSS program under section 23 the U.S. Housing Act of 1937 (42 U.S.C. 1437u) or the FUPY/FYI youth has been unable to enroll in the program during the first 36 months of receiving FUPY/FYI assistance, the FUPY/FYI youth is entitled to receive an extension of FUPY/FYI assistance for up to two successive 12-month periods beyond the 36-month time limit of assistance provided that the youth engaged in at least one of the education, workforce development, or employment activities below for not less than 9 months of the 12-month period preceding each extension.

In order to meet the 9-months out of the preceding 12-months requirement, the youth may have engaged in one of the education, workforce development, or employment activities described below or a combination of these activities. For example, a youth may have engaged in obtaining a recognized postsecondary credential at the beginning of the 12-month period, but then the youth obtained the credential and became employed later in the 12-month period. The youth may combine the time that they were engaged in obtaining a recognized postsecondary credential and the time that they were employed in order to meet the 9-months out of 12-months requirement.

HUD notes that FSHO does not establish a minimum number of classes or credits that a youth must be enrolled in or a minimum number of hours that a youth must work in order to receive an extension of FUPY/FYI assistance under this provision. Conversely, FSHO does not prohibit a PHA from establishing such minimum requirements. Therefore, a PHA may, but is not required, to establish a minimum number of classes or credits that a youth must be enrolled in or a minimum number of hours that a youth must work in order to receive an extension of FUPY/FYI assistance under this provision. However, HUD strongly encourages PHAs to establish policies that provide extensions of FUPY/FYI assistance for youth that were engaged in such activities on a part-time basis as long as they meet the requirement to engage in such activities for not less than 9 months of the 12-month period preceding each extension. If a PHA chooses to establish minimum requirements, HUD encourages the PHA to establish policies that would allow them to make exceptions to such requirements for circumstances beyond the youth's control.

For example, a PHA may establish a requirement that a youth must be enrolled in education activities on at least a halftime basis but may make exceptions to this requirement if the youth is unable to enroll in a sufficient number of classes due to a lack of course offerings by the educational institution where the youth is enrolled. Similarly, a PHA may establish a requirement that a youth must work a minimum number of hours per week but may make exceptions to this requirement if the youth's hours are reduced due to circumstances beyond their control or the youth must temporarily reduce their work hours due to a family emergency. A PHA's policies implementing its education, workforce development, and employment requirements must be included in its Administrative Plan, in accordance with the procedures set forth in 24 CFR 903.21.

Education Requirements

- The youth was engaged in obtaining a recognized postsecondary credential or a secondary school diploma or its recognized equivalent.

A PHA may use the definitions of “recognized postsecondary credential” and “secondary school diploma or its recognized equivalent” under the Workforce Innovation and Opportunity Act (WIOA).

WIOA defines a “recognized postsecondary credential” as a credential consisting of an industry-recognized certificate or certification, a certificate of completion of an apprenticeship, a license recognized by the State involved or Federal Government, or an associate or baccalaureate degree (29 U.S.C 3102). Examples of a “recognized postsecondary credential” include, but are not limited to, an associate’s degree, bachelor’s degree, occupational licensure, or occupational certification (see U.S. Department of Labor, Training and Employment Guidance Letter No. 10-16, Change 1).

For the purpose of WIOA, the U.S. Department of Labor defines a “secondary school diploma or its recognized equivalent” as a secondary school diploma (or alternate diploma) that is recognized by a State and that is included for accountability purposes under the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the Every Student Succeeds Act (ESSA). A secondary school equivalency certification signifies that a student has completed the requirement for a high school education. Examples of a “secondary school diploma or its recognized equivalent” include, but are not limited to, obtaining certification of attaining passing scores on a State-recognized high school equivalency test, earning a secondary school diploma or State-recognized equivalent, or obtaining certification of passing a State-recognized competency-based assessment.

- The youth was enrolled in an “institution of higher education,” as such term is defined in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)) or an institution that meets the definition of a “proprietary institution of higher education” or a “postsecondary vocational institution” under sections 102(b)(1) and (c)(1) of the Higher Education Act of 1965 (20 U.S.C. 1002(b)(1) and (c)(1)), respectively.

Workforce Development Requirements

- The youth was participating in a career pathway, as such term is defined in section 3 of the Workforce Innovation and Opportunity Act (29 U.S.C. 3102).

Employment Requirements

- The youth was employed.

Questions for Comment

2. Should HUD establish a minimum number of classes or credits that a youth must be enrolled in or a minimum number of hours that a youth must work in order to receive an extension of FUPY/FYI assistance under this provision?
3. Should HUD establish a maximum number of classes or credits or a maximum number of work hours that a PHA may require in order for a youth to receive an extension of FUPY/FYI assistance under this provision?

(c) Extension of Assistance Exceptions.

A FUPY/FYI youth will be entitled to receive an extension of their FUPY/FYI assistance for up to 24 months beyond the 36-month time limit of assistance if they certify that they meet one of the exceptions below.

- The FUPY/FYI youth is a parent or other household member responsible for the care of a dependent child under the age of 6 or for the care of an incapacitated person.

HUD is not defining the term “incapacitated person” but is providing PHAs with flexibility in applying this requirement. PHAs may choose to apply the definition of “incapacitated person” that has been established under state or local law. HUD encourages PHAs to apply this exception in a manner that provides extensions of FUPY/FYI assistance to the broadest population possible consistent with the statutory requirements.

FSHO does not require that the child or incapacitated person reside in the household in order for the FUPY/FYI youth to certify that they meet this exception. For example, a FUPY/FYI youth may submit this certification on the basis that they are responsible for the care of a

dependent child under the age of 6 even if the child resides in the household only part of the time due to a shared custody arrangement. Similarly, a FUPY/FYI youth may submit this certification on the basis that they are responsible for the care of an incapacitated person, such as an elderly relative, even if the incapacitated person does not reside in the household.

- The FUPY/FYI youth is a person who is regularly and actively participating in a drug addiction or alcohol treatment and rehabilitation program.
- The FUPY/FYI youth is a person who is incapable of complying with the requirement to participate in a Family Self-Sufficiency (FSS) program as described in paragraph (a) above or engage in education, workforce development, or employment activities as described in paragraph (b) above, as applicable, due to a documented medical condition.

HUD is not defining the types of medical conditions that may meet this requirement but is providing PHAs with flexibility in applying this requirement. HUD encourages PHAs to apply this exception in a manner that provides extensions of FUPY/FYI assistance to the broadest population possible consistent with the statutory requirements.

A FUPY/FYI youth that meets one of these exceptions must still be offered an opportunity to enroll in FSS (if it is available to them) and receive any supportive services available to FUPY/FYI youth, including those described in section III.B. of this document. A FUPY/FYI youth may choose to participate in an FSS program or engage in education, workforce development, or employment activities even if they meet one of these statutory exceptions.

ii. Verification of Compliance

In order to extend the FUPY/FYI assistance for an eligible youth beyond the 36-month time period, the PHA must determine that the youth meets one of the statutory conditions described in paragraphs III(A)(i)(a), (b), or (c) above. Section 103(b)(1) of FSHO requires that the PHA verify that the FUPY/FYI youth meets one of these statutory conditions on an annual basis in conjunction with reviews for determining income eligibility for the HCV program (24

CFR 982.516). In order to provide an extension of assistance, the PHA would need to verify compliance with these requirements at the end of the 36-month time period and the 48-month time period of FUPY/FYI assistance. The PHA does not need to verify compliance with these requirements at the end of the 60-month time period since the maximum length of assistance is 60 months.

HUD notes that since FUPY/FYI vouchers are limited to 36 months, a PHA will only need to conduct an annual reexamination of the FUPY/FYI youth at the end of the 36-month time period and the 48-month time period if the youth meets one of the statutory conditions that allow for the extension of FUPY/FYI assistance. Therefore, the PHA may wish to time its verification of compliance process in advance of the annual reexamination process. The PHA should ensure that it provides sufficient time for the FUPY/FYI youth to demonstrate that they meet one of these statutory conditions and for the PHA to conduct an annual reexamination prior to the expiration of the FUPY/FYI assistance.

Since the PHA only needs to verify compliance with the statutory conditions described in paragraphs III(A)(i)(a), (b), or (c) above on an annual basis (i.e., at the end of the 36-month time period and the 48-month time period), the failure of a FUPY/FYI youth to meet one of these statutory conditions would only impact their ability to receive a subsequent extension of FUPY/FYI assistance; it would not serve as a basis for terminating the FUPY/FYI assistance prior to the annual reexamination. This does not affect the ability of the PHA to terminate FUPY/FYI assistance in accordance with 24 CFR 982.552.

Furthermore, a FUPY/FYI youth who received an extension of voucher assistance at the end of the 36-month time period based on meeting one of these statutory conditions does not have to meet this same statutory condition when they reach the end of the 48-month time period. The FUPY/FYI youth may demonstrate that they meet a different condition in order to receive an extension of their assistance.

For example, a FUPY/FYI youth received an extension of voucher assistance at the end of the 36-month time period based on their certification that they were caring for a child under the age of 6. However, at the 48-month reexamination, the child is no longer under the age of 6. The FUPY/FYI youth must be given an opportunity to show that they meet a different condition in order to receive an extension of their assistance.

To verify compliance with the statutory conditions described in paragraphs III(A)(i)(a), (b), or (c) above, the PHA must conduct the following activities, as applicable, prior to the end of the 36-month time period and 48-month time period:

(a) Verification of Compliance for Youth Participating in a Family Self-Sufficiency Program

To verify compliance with the FSS requirement described in paragraph III(A)(i)(a) above, the PHA must examine its records to confirm, or obtain confirmation from the PHA's FSS program staff, that the FUPY/FYI participant is in compliance with FSS program requirements and has not been terminated from the FSS program.

(b) Verification of Compliance for Youth Who Engage in Education, Workforce Development, or Employment Activities or Who Meet One of the Statutory Exceptions

To verify compliance with the education, workforce development, or employment requirement described in paragraph III(A)(i)(b) above or one of the statutory exceptions described in paragraph III(A)(i)(c) above, the PHA must provide the FUPY/FYI youth written notification informing them that they may receive an extension of their FUPY/FYI assistance if they meet one of the statutory conditions described in paragraphs III(A)(i)(b) and (c) above and providing instructions on how the youth may demonstrate that they meet one of these conditions.⁷ This notification must be provided sufficiently in advance of the end of the 36-month time period or 48-month time period, as applicable, to allow the FUPY/FYI youth to

⁷ HUD encourages PHAs to ensure that any written notification that is sent to the FUPY/FYI youth only includes the statutory conditions that are available to them. Specifically, the PHA should be mindful that the education, workforce development, and employment requirement described in paragraph III(A)(i)(b) above is only available to FUPY/FYI youth who are unable to enroll in the FSS program.

demonstrate that they meet one of these statutory conditions and for the PHA to conduct an annual reexamination prior to the expiration of the FUPY/FYI assistance. When necessary, the PHA must provide this notification in a format accessible to FUPY/FYI youth with disabilities (see 24 CFR 8.6) and in a translated format for FUPY/FYI youth with limited English proficiency (see 24 CFR 1.4(b)(2)(i); 72 FR 2731).

In order for the FUPY/FYI youth to meet the education, workforce development, or employment requirement described in paragraph III(A)(i)(b) above, the youth must demonstrate to the PHA that they were engaged in at least one education, workforce development, or employment activity for at least 9 months of the 12-month period immediately preceding the end of 36-month or 48-month time period, as applicable. Due to the timing of when the PHA verifies compliance and conducts the annual reexamination, the FUPY/FYI youth may have not yet met the 9-month requirement but may be able to demonstrate that they will meet the 9-month requirement as of the end of the 36-month or 48-month time period. In such cases, the FUPY/FYI youth will still be considered to have met the requirements of paragraph III(A)(i)(b). In order for the FUPY/FYI youth to meet one of the statutory exceptions described in paragraph III(A)(i)(c) above, the youth must submit a certification to the PHA that they meet one of these exceptions. This certification is the only documentation that the FUPY/FYI youth must submit in order to demonstrate that they meet one of these exceptions.

If the PHA determines that the youth meets one of the statutory conditions described in paragraphs III(A)(i)(a), (b), or (c) above, the PHA would then conduct an annual reexamination. If the annual reexamination determines that the youth is still eligible for the HCV program, the PHA must provide the FUPY/FYI youth the extension of voucher assistance in accordance with the applicable statutory provision.

If the FUPY/FYI youth does not meet any of the statutory conditions described in paragraphs III(A)(i)(a), (b), and (c) above, the youth is subject to the statutory time limit of 36 months or the time limit of any extension that the youth has already received, and the FUPY/FYI

voucher must be terminated once the youth reaches this time limit. The calculation of the time limit begins from the date the first HAP contract is signed (for tenant-based vouchers) or from the date the youth entered into the initial lease agreement (for project-based vouchers). Note that the number of months is calculated based on the number of months that HAP subsidy is being paid on behalf of the youth, not the number of months that the youth is in the FUPY/FYI program. Prior to termination, the PHA must offer the FUPY/FYI youth the opportunity to request an informal hearing, in accordance with 24 CFR 982.555 and the procedures set forth in its Administrative Plan.

B. Supportive Services (Section 103(b)(1) of FSHO)

Section 103(b)(1) of FSHO amended section 8(x) of the U.S. Housing Act of 1937 (42 U.S.C. 1437f(x)) to add a new paragraph (5), subparagraph (B), that makes FUPY/FYI youth eligible for any supportive services (as such term is defined in section 3 of the Workforce Innovation and Opportunity Act (WIOA) (29 U.S.C. 3102)) made available in connection with any housing assistance program of the PHA, by or through the PHA. Section 3 of WIOA defines supportive services as services, such as transportation, child care, dependent care, and needs-related payments, that are necessary to enable an individual to participate in activities authorized under WIOA.⁸ This subparagraph also requires the PHA to inform the youth of the existence of such programs or services and of their eligibility for such programs and services upon initial provision of FUPY/FYI assistance.

The FUP program already requires that the PHA's partnering PCWA(s) offer a range of supportive services to eligible youth for the period defined in the notice or NOFA/O for which the funding was made available. FSHO does not change these existing requirements but requires that the PHA make available to FUPY/FYI youth any supportive services that are made available in connection with any other housing assistance program of the PHA, by or through the PHA.

⁸ Section 3 of WIOA (29 U.S.C. 3102) also includes "housing" in its definition of "supportive services." However, housing would not be considered a supportive service under the FUPY/FYI program.

However, this provision of FSHO does not supersede any eligibility requirements for the supportive services that are made available in connection with any other housing assistance program of the PHA, by or through the PHA.

At the time the FUPY/FYI voucher is issued to an eligible youth, the PHA must inform the youth of the FUPY/FYI supportive services available to them, the existence of any other programs or services, and their eligibility for such programs and services. The PHA must provide this information as part of the family briefing pursuant to 24 CFR 982.301(a).

However, participation in supportive services cannot be required as a condition of receiving FUPY/FYI assistance.

C. Applicability to Moving to Work Agencies (Section 103(b)(1) of FSHO)

Section 103(b)(1) of FSHO amended section 8(x) of the U.S. Housing Act of 1937 (42 U.S.C. 1437f(x)) to add a new paragraph (5), subparagraph (C), to allow Moving to Work (MTW) agencies to establish alternative terms, conditions, or requirements for the extension of FUPY/FYI assistance. For example, an MTW agency may provide an extension of FUPY/FYI assistance for youth participating in a local MTW self-sufficiency program in lieu of participating in an FSS program under section 23 of the U.S. Housing Act. Note that an MTW agency may only waive or modify the terms, conditions, or requirements to receive an extension of FUPY/FYI assistance, not the length of the extension of assistance. An MTW agency also may not waive or modify the exceptions under which a youth who does not meet the requirement to participate in an FSS program as described in paragraph III(A)(i)(a) of this document or engage in education, workforce development, or employment activities as described in paragraph III(A)(i)(b) of this document, as applicable, may receive an extension of FUPY/FYI assistance.

Any alternative terms, conditions, and requirements for the extension of FUPY/FYI assistance must be included in the Annual MTW Plan (for initial agencies) or the MTW Supplement to the PHA Plan (for expansion agencies). If an MTW PHA's Annual MTW Plan or MTW Supplement to the Annual PHA Plan does not include alternative terms, then the policies

set forth in this Notice will apply to the MTW PHA. Further, FUPY/FYI vouchers are not eligible for funding fungibility under the Standard MTW Agreement or MTW Amendment to the Annual Contributions Contract.

D. Termination of Vouchers Upon Turnover (Section 103(b)(1) of FSHO)

Section 103(b)(1) of FSHO amended section 8(x) of the U.S. Housing Act of 1937 (42 U.S.C. 1437f(x)) to add a new paragraph (5), subparagraph (D), to prohibit a PHA from reissuing a FUPY/FYI voucher when assistance for the youth initially assisted is terminated, unless specifically authorized by the Secretary.

This provision of FSHO prohibiting the reissuance of vouchers upon turnover does not affect FUPY/FYI vouchers funded by an appropriations Act that specified such vouchers be reissued to eligible youth upon turnover. Currently, the appropriations Acts for FUPY/FYI require that vouchers be made available to eligible recipients upon turnover (except for FYI TPVs awarded under Notice PIH 2019-20, which cannot be reissued when the youth exits the HCV program). For FUPY/FYI vouchers (except FYI TPVs), PHAs are currently required to notify HUD if it determines that it no longer has an identified need for a FUPY/FYI voucher upon turnover, so HUD can recapture the assistance and reallocate it to a PHA with an identified need. If there are changes to this requirement in future FUPY/FYI appropriations Acts, HUD will provide guidance at that time.

IV. Provisions of FSHO Effective Upon Enactment or Otherwise Already in Effect

A. Definition of Family (Section 103(a) of FSHO)

Section 103(a) of FSHO amended the definition of “family” at section 3(b)(3)(A) of the U.S. Housing Act of 1937 (42 U.S.C 1437a(b)(3)(A)) to clarify that a family may include families consisting of a single person who is a youth described in section 8(x)(2)(B) of the U.S. Housing Act of 1937 (42 U.S.C. 1437f(x)(2)(B)).

Implementation Action. This statutory change was effective as of the date of enactment of FSHO (i.e., December 27, 2020). This document serves as notice to PHAs that the definition of

family in the PHA's Administrative Plan must reflect this statutory change (24 CFR 982.54(d)(4)(i)). At a later date, HUD will undertake conforming rulemaking to revise its regulations to reflect this statutory change.

B. Allocation of Assistance for Youth Aging Out of Foster Care (Section 103(b)(1) of FSHO)

Section 103(b)(1) of FSHO amended section 8(x)(3) of the U.S. Housing Act of 1937 to require that the Secretary, subject only to the availability of funds, allocate FUPY/FYI assistance to any PHA that (1) administers FUPY/FYI assistance or seeks to administer such assistance, consistent with procedures established by the Secretary, (2) has requested FUPY/FYI assistance so that they may provide timely assistance to eligible youth, and (3) has submitted to the Secretary a statement describing how it will connect assisted youths with local community resources and self-sufficiency services, to the extent they are available, and obtain referrals from PCWAs regarding youths in foster care who become eligible for FUPY/FYI assistance.

Implementation Action. The Consolidated Appropriations Act, 2021, (Pub. L. 116-260) and the Further Consolidated Appropriations Act, 2020, (Pub. L. 116-94) made funding available to provide HCV assistance on a non-competitive basis for eligible youth under section 8(x) of the U.S. Housing Act of 1937. HUD made this funding available through Notices PIH 2020-28 and PIH 2021-26. These notices set forth application requirements that are consistent with this provision of FSHO.

C. Reports (Section 103(b)(1) of FSHO)

Section 103(b)(1) of FSHO amended section 8(x) of the U.S. Housing Act of 1937 (42 U.S.C. 1437f(x)) to add a new paragraph (5), subparagraph (E)(i)(I), to require that PHAs report the number of persons on whose behalf FUPY/FYI assistance was provided during the fiscal year.

Implementation Action. PHAs are already required to report this information in the Public Information Center (PIC). PHAs must use a special program code for FUPY/FYI voucher

participants in line 2n of the Family Report (form HUD-50058) or line 2p of the MTW Family Report (form HUD-50058-MTW), as applicable. If the voucher is issued as part of FUP, the special program code is “FUPY.” If the voucher is issued as part of FYI, the special program code is “FYI,” except for FYI TPVs, whose special program code is “FYITPV.”

D. Exceptions to Limitations for Project-Based Voucher (PBV) Assistance (Section 103(c) of FSHO)

Section 103(c) of FSHO amended the percentage limitation at section 8(o)(13)(B)(ii) of the U.S. Housing Act of 1937 (42 U.S.C. 1437f(o)(13)(B)(ii)) and the income-mixing requirement at section 8(o)(13)(D)(ii)(I) of the U.S. Housing Act (42 U.S.C. 1437f(o)(13)(D)(ii)(I)) for units that house eligible youth receiving FUPY/FYI assistance. Note that this section is not applicable to FYI TPVs that were awarded under Notice PIH 2019-20, since PHAs are prohibited from project-basing FYI TPVs.

While FUP vouchers (not including FYI vouchers) can be used for either families or youth, a PBV unit may only be covered by these amendments to the percentage limitation and income-mixing requirement if the FUP PBV assistance is provided on behalf of an eligible youth. Therefore, the HAP contract must specify that the PBV unit is specifically made available to FUP youth in order for the unit to be covered. In order to make PBV units specifically available to FUP youth, the PHA must determine that such a limitation is consistent with the local housing needs of both eligible FUP populations (i.e., families and youth) and maintain documentation to support this determination. The PHA must also amend its Administrative Plan to include the limitation of these FUP PBV units to eligible youth. Since FYI vouchers are already limited to youth, the PHA does not need to take these steps in order to project-base FYI vouchers under this new percentage limitation and income-mixing requirement authority.

(i) Section 103(c)(1), Percentage Limitation.

Section 103(c)(1) of FSHO amended the percentage limitation at section 8(o)(13)(B)(ii) of the U.S. Housing Act of 1937 to make units that house eligible youth

receiving FUPY/FYI assistance an eligible category of units where a PHA is permitted to project-base additional vouchers above the 20 percent PBV program limitation. Section 8(o)(13)(B)(ii) of the U.S. Housing Act of 1937, as amended by section 106(a)(2) of the Housing Opportunity Through Modernization Act of 2016, Public Law 114-201, 130 Stat. 782 (HOTMA), allows a PHA to project-base an additional 10 percent of its units above the 20 percent program limit, provided those additional units fall into one of the following categories: (1) The units are specifically made available to house individuals and families that meet the definition of homeless under section 103 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11302); (2) The units are specifically made available to house families that are comprised of or include a veteran; (3) The units provide supportive housing to persons with disabilities or to elderly persons; (4) The units are located in a census tract with a poverty rate of 20 percent or less, as determined in the most recent American Community Survey 5-Year Estimates. Pursuant to section 103(c)(1) of FSHO, this list of categories now includes units that house eligible youth receiving FUPY/FYI assistance.

Implementation Action. The provision of HOTMA that amended section 8(o)(13)(B)(ii) of the U.S. Housing Act of 1937 to allow for a 10 percent increase in project-based vouchers for certain categories of units was implemented via a Federal Register notice, 82 FR 5458 (January 18, 2017) (“HOTMA January 18, 2017, Notice”), and the subsequent amendment, 82 FR 32461 (July 14, 2017) (“HOTMA July 14, 2017, Notice”). HUD subsequently issued guidance on HOTMA implementation in Notice PIH 2017-21. Under section II.C.2.B. of the HOTMA January 18, 2017, Notice, a PHA that wishes to add PBV units under the 10 percent exception authority must submit certain information to HUD.

This statutory change making units that house eligible youth receiving FUPY/FYI assistance eligible for the 10 percent increase in the program cap was effective as of the date of enactment of FSHO (i.e., December 27, 2020) and applies to vouchers that were not in use on behalf of an assisted family as of December 27, 2020. A PHA that wishes to add PBV units

that house eligible youth receiving FUPY/FYI assistance under the 10 percent exception authority must submit the information required under section II.C.2.B. of the HOTMA January 18, 2017, Notice to HUD. A PHA may amend a previous submission under section II.C.2.B. that is currently in process if it wants to include units that house eligible youth receiving FUPY/FYI assistance under the 10 percent exception authority.

A PHA need not meet the 20 percent program cap before it can designate eligible units for the 10 percent exception category. For example, if a PHA has project-based 10 percent of its units under the percentage limitation and wants to project-base 5 percent of its units under the 10 percent exception category, it may do so. This PHA would have 10 percent remaining under the percentage limitation and 5 percent remaining under the 10 percent exception authority. A PHA proposal that would result in the PHA exceeding either the 20 percent program cap or the 10 percent exception from the program cap will be rejected by the HUD field office. As long as a PHA has not exceeded the 30 percent limit, it may amend its proposal by moving units from one category to the other, provided that only eligible units are counted toward the 10 percent exception from the program cap.

PBV units that house eligible youth receiving FUPY/FYI assistance may only be covered by this 10 percent exception authority if the units are under a HAP contract that became effective after December 27, 2020, and if the unit is occupied by an eligible youth receiving FUPY/FYI assistance. Units added after December 27, 2020, through an amendment of a HAP contract that became effective after December 27, 2020, are eligible for this 10 percent exception authority. In contrast, units added after December 27, 2020, through an amendment of a HAP contract that became effective on or prior to December 27, 2020, are not eligible for this 10 percent exception authority.

The PBV unit specifically made available to FUPY/FYI youth, as applicable, will apply under the 10 percent exception authority as long as an eligible youth receiving FUPY/FYI assistance resides in the unit. Therefore, prior to project-basing a FUPY/FYI voucher under this

10 percent exception authority, the PHA must plan for how it will maintain compliance with this 10 percent exception authority once the FUPY/FYI assistance has expired for a particular youth who has leased the unit. In order for the unit to remain under the FUPY/FYI exception authority, the youth must vacate the unit once their FUPY/FYI assistance has expired and the owner must lease the unit to another FUPY/FYI youth. If the youth does not move from the unit upon the expiration of their FUPY/FYI assistance, at that time the PHA must take one of the following actions since the unit no longer qualifies for the FUPY/FYI exception authority:

- Remove the unit from the HAP contract. The PHA would remove the unit from the HAP contract if the youth remains in the unit without assistance or with non-FUPY/FYI tenant-based assistance. The unit may be added back to the contract per 24 CFR 983.207(b)⁹ if the youth later moves from the unit;
- Amend the HAP contract to substitute the youth's current unit for another unit in the building if it is possible to do so in accordance with 24 CFR 983.207(a). Such a substitution will result in the other unit in the building being covered by the FUPY/FYI 10 percent exception authority. A PHA may, but is not required to, in conjunction with such substitution add the youth's current unit to the HAP contract if it is possible to do so in accordance with 24 CFR 983.207(b), as amended by HOTMA, including that such addition does not cause the PHA to exceed the program limitation or become non-compliant with the income-mixing requirement (as described in the following section). If the youth's current unit is not added to the HAP contract, the youth may remain in the unit without assistance or with non-FUPY/FYI tenant-based assistance; or
- Change the 10 percent exception authority category from FUPY/FYI to one of the other 10 percent exception categories if the FUPY/FYI youth, or the unit, happens to qualify for it, so long as the change is allowable under the income-mixing requirement (as described in the following section).

⁹ As amended by HOTMA (*see* HOTMA January 18, 2017 Notice; Notice PIH 2017-21 Att. J).

A PHA may only allow the youth to remain in the unit with non-FUPY/FYI HCV assistance (either tenant-based or project-based, as applicable) if the youth was selected from the applicable waiting list in accordance with the policies set forth in the PHA's Administrative Plan. A PHA may, but is not required to, create a preference applicable to the PHA's regular HCV and/or PBV waiting lists for persons whose FUPY/FYI assistance is expiring and will have a lack of adequate housing as a result of their termination from the program, or other similar category. However, as noted above, the unit will no longer qualify for the FUPY/FYI exception category if the youth remains in the unit with another form of HCV assistance after their FUPY/FYI assistance has expired.

At a later date, HUD will undertake conforming rulemaking to revise its regulations to reflect this statutory change.

(ii) Section 103(c)(2), Income-Mixing Requirement.

Section 103(c)(2) of FSHO amended the income-mixing requirement (i.e., the project cap) at section 8(o)(13)(D)(ii)(I) of the U.S. Housing Act of 1937 to except units that are exclusively made available to youth receiving FUPY/FYI assistance from the cap on the number of PBV units in a project. Section 8(o)(13)(D)(ii)(I) of the U.S. Housing Act, as amended by section 106(a)(3) of HOTMA, generally limits the number of PBV units in a project to the greater of 25 units or 25 percent of the units in the project. Under HOTMA, units that are in one of the following categories are excluded from the 25 percent or 25-unit project cap on PBV assistance: (1) Units exclusively serving elderly families (as such term is defined in 24 CFR 5.403); or (2) Units housing households eligible for supportive services available to all families receiving PBV assistance in the project. Pursuant to section 103(c)(2) of FSHO, this list of categories now includes units that are exclusively made available to eligible youth receiving FUPY/FYI assistance.

Implementation Action. The provision of HOTMA that amended section 8(o)(13)(D)(ii)(I) of the U.S. Housing Act of 1937 to except certain categories of units from the project cap was

implemented via the HOTMA January 18, 2017, Notice and amended in the HOTMA July 14, 2017, Notice. HUD subsequently issued guidance on HOTMA implementation in Notice PIH 2017-21. Under section II.C.3.A. of the HOTMA January 18, 2017, Notice, owners under HAP contracts already in effect prior to the effective date of the HOTMA January 18, 2017, Notice (i.e., April 18, 2017) are still obligated by the terms of those HAP contracts with respect to the requirements that apply to the number of excepted units in a multifamily project. The owner must continue to designate the same number of contract units and assist the same number of excepted families as provided under the HAP contract during the remaining term of the HAP contract unless the owner and the PHA mutually agree to change those requirements.

This statutory change excepting units that are exclusively made available to youth receiving FUPY/FYI assistance from the project cap was effective as of the date of enactment of FSHO (i.e., December 27, 2020) and applies to vouchers that were not in use on behalf of an assisted family as of December 27, 2020. Therefore, units exclusively made available to youth receiving FUPY/FYI assistance may be excepted from the project cap for HAP contracts first effective after December 27, 2020. Consistent with the effect on existing contracts in the implementation of the HOTMA provision on units exclusively made available to certain families, owners under HAP contracts already in effect on or prior to December 27, 2020, are still obligated by the terms of those HAP contracts with respect to the requirements that apply to the number of excepted units in a multifamily project. The owner must continue to designate the same number of contract units and assist the same number of excepted families as provided under the HAP contract during the remaining term of the HAP contract unless the owner and the PHA mutually agree to change those requirements. The PHA and owner may agree by mutual consent to change the terms of a HAP contract already in effect as it pertains to the exception category of units exclusively made available to youth receiving FUPY/FYI assistance (i.e., a PHA and owner may agree to add excepted units exclusively made available to FUPY/FYI youth to an existing HAP contract or change the exception category of a current excepted unit to be a unit exclusively

made available to FUPY/FYI youth). The PBV HAP contract may not be changed to include units exclusively made available to youth receiving FUPY/FYI assistance if the change would jeopardize an assisted family's eligibility for continued assistance at the project.

Excepted PBV units exclusively made available to FUPY/FYI youth, as applicable, qualify as excepted as long as an eligible youth receiving FUPY/FYI assistance resides in the unit. Therefore, prior to entering into a HAP contract that includes FUPY/FYI excepted units, the PHA must plan for how it will maintain compliance with the requirements for excepted units once the FUPY/FYI assistance has expired for a particular youth who has leased the unit. In order for the unit to remain under the FUPY/FYI excepted unit category, the youth must vacate the unit once their FUPY/FYI assistance has expired and the owner must lease the unit to another FUPY/FYI youth. If the youth does not move from the unit upon the expiration of their FUPY/FYI assistance, at that time the PHA must take one of the following actions in order to maintain compliance with the income-mixing requirement:

- Remove the unit from the HAP contract. The PHA would remove the unit from the HAP contract if the youth remains in the unit without assistance or with non-FUPY/FYI tenant-based assistance. The unit may be added back to the contract per 24 CFR 983.207(b)¹⁰ if the youth later moves from the unit;
- Amend the HAP contract to substitute the youth's current unit for another unit in the building if it is possible to do so in accordance with 24 CFR 983.207(a). Such a substitution will result in the other unit in the building being covered by the FUPY/FYI excepted unit category. A PHA may, but is not required to, in conjunction with such substitution add the youth's current unit to the HAP contract if it is possible to do so in accordance with 24 CFR 983.207(b), as amended by HOTMA, including that such addition does not cause the PHA to exceed the program limitation or become non-compliant with the income-mixing requirement.

¹⁰ As amended by HOTMA (*see* HOTMA January 18, 2017 Notice; Notice PIH 2017-21 Att. J).

If the youth's current unit is not added to the HAP contract, the youth may remain in the unit without assistance or with non-FUPY/FYI tenant-based assistance; or

- Amend the HAP contract to change the excepted unit category from FUPY/FYI to another excepted unit category (such as supportive services) if the FUPY/FYI youth, or the unit, happens to qualify for it, or change the unit to a non-excepted unit if doing so is allowable under the income-mixing requirement. Such a change in the form of PBV assistance used in the unit is permissible only if it does not cause the PHA to exceed the program limitation.

A PHA should be aware that it may only allow the youth to remain in the unit with non-FUPY/FYI HCV assistance (either tenant-based or project-based, as applicable) if the youth was selected from the applicable waiting list in accordance with the policies set forth in the PHA's Administrative Plan. A PHA may, but is not required to, create a preference applicable to the PHA's regular HCV and/or PBV waiting lists for persons whose FUPY/FYI assistance is expiring and will have a lack of adequate housing as a result of their termination from the program, or other similar category. However, as noted above, the unit will no longer qualify for the FUPY/FYI excepted unit category if the youth remains in the unit with another form of HCV assistance after their FUPY/FYI assistance has expired.

At a later date, HUD will undertake conforming rulemaking to revise its regulations to reflect this statutory change.

V. Provisions of FSHO that Require Future Action from HUD to be Implemented

A. Reports (Section 103(b)(1) of FSHO)

Section 103(b)(1) of FSHO amended section 8(x) of the U.S. Housing Act of 1937 (42 U.S.C. 1437f(x)) to add a new paragraph (5), subparagraphs I(i)(II) and (III), to require that PHAs report the following information to HUD regarding FUPY/FYI assistance.

(i) The number of persons who applied for FUPY/FYI assistance during the fiscal year who were not provided FUPY/FYI assistance and the reason why the PHA was unable to provide such assistance.

PHAs are required to report the number of persons who applied for FUPY/FYI assistance during the fiscal year who were not provided FUPY/FYI assistance and the reason why the PHA was unable to provide such assistance. For the purpose of this reporting requirement, HUD interprets the number of persons who applied for assistance during the fiscal year to be the number of youth that a partnering PCWA determined to be eligible for FUPY/FYI assistance and referred to the PHA during the fiscal year. Therefore, the PHA must report the number of persons who were referred for FUPY/FYI assistance by a partnering PCWA during the fiscal year who were not provided FUPY/FYI assistance and the reason why the PHA was unable to provide such assistance. For example, a PHA may have been unable to provide FUPY/FYI assistance because it did not have any FUPY/FYI vouchers available or it determined that the person was not eligible for the HCV program.

Implementation Action. The requirement to report this information to HUD is not in effect until HUD completes the Paperwork Reduction Act requirements. Until such time, PHAs are not required to report this information to HUD. HUD notes that it would be beneficial for PHAs to maintain this information to facilitate future reporting to HUD.

(ii) How the PHA communicated or collaborated with PCWAs to collect such data during the fiscal year.

PHAs are required to report how they communicated or collaborated with PCWAs to collect the data described in paragraphs IV(C) and V(A)(i) of this document.

Implementation Action. The requirement to report this information to HUD is not in effect until HUD completes the Paperwork Reduction Act requirements. Until such time, PHAs are not required to report this information to HUD. HUD notes that it would be beneficial for PHAs to maintain this information to facilitate future reporting to HUD.

**B. Coordination Between Public Housing Agencies and Public Child Welfare Agencies
(Section 103(b)(2) of FSHO)**

Section 103(b)(2) of FSHO amended section 8(x)(4) of the U.S. Housing Act of 1937 (42 U.S.C. 1437f(x)(4)), which requires HUD to issue guidance to improve coordination between PHAs and PCWAs in carrying out the FUP program. Specifically, section 103(b)(2) of FSHO requires the provision of guidance on establishing a point of contact at the PHA to receive appropriate referrals of eligible recipients from its partnering PCWA(s).

Implementation Action. HUD will provide guidance in this area as part of the guidance required by section 8(x)(4) of the U.S. Housing Act. HUD expects to issue this guidance in the near future.

C. Supplemental Fees for Administering Assistance for Youth Aging Out of Foster Care (Section 103(b)(3) of FSHO)

Section 103(b)(3) of FSHO amended section 8(q) of the U.S. Housing Act of 1937 (42 U.S.C 1437f(q)) by adding a new paragraph (5) to allow HUD to provide supplemental fees to PHAs for the cost of administering FUPY or FYI vouchers but only if the PHA waives any residency requirement that it has established pursuant to section 8(r)(1)(B)(i) of the U.S. Housing Act of 1937 (42 U.S.C 1437f(r)(1)(B)(i)). Section 8(r)(1)(B)(i) allows PHAs to require that any family that does not live in its jurisdiction at the time the family applies for HCV assistance must lease and occupy a dwelling in the PHA's jurisdiction during the first 12-months of assistance.

A PHA's residency requirement applies to all HCVs. As a result, PHAs are prohibited from making changes to the residency requirement for FUPY and FYI only absent statutory authority as FSHO did not grant such authority.

Implementation Action: Should HUD receive funding to provide supplemental fees for FUPY or FYI vouchers under this section, HUD will issue a notice communicating the availability of funds, eligible activities and expenses, and instructions on how to apply for such funds.

VI. Environmental Impact

This notice does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this notice is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Dominique Blom,

General Deputy Assistant Secretary for

Public and Indian Housing.

BILLING CODE: 4210-67

[FR Doc. 2022-01285 Filed: 1/21/2022 8:45 am; Publication Date: 1/24/2022]